

## **Workers' Compensation Advisory Council**

Friday, June 10, 2016  
Room 307 - LOB – 9:00 a.m.

### **Minutes**

**Present:** Ms. Margaret Crouch, Chair; Ms. Sally MacFadden; Senator Gary Daniels; Ms. Marian Mitchell; Ms. C.J. Stone; Dr. Douglas Goumas; Ms. Eileen Bernard; Mr. Martin Jenkins; Ms. Merideth Schwab.

**Absent:** Mr. William McQuillen, Vice Chair; Representative Brian Seaworth.

**Call to Order** – The meeting was called to order by Ms. Crouch at 9:06 a.m.

**Review & Action on May 6, 2016 Minutes** – The minutes were reviewed by the Council.

Senator Daniels motioned to accept the minutes of the May 6, 2016 meeting and Ms. Bernard seconded. *The motion was passed unanimously.*

### **Managed Care**

#### **Recertification –**

**Windham Group MCO** – Representatives of Windham Group, Nicole Lovett, Managed Care Coordinator, and Gary Lavoie, Director of Operations, introduced themselves. Ms. Crouch had a couple of concerns. The first was about the outline of the network and the way it is listed. Ms. Schwab indicated that they would send the injured worker to an adjacent county to cover a specialty that was deficient in a particular county and in the plan Ms. Lovett has listed out where Windham Group would send the injured worker. Ms. Crouch also had a question about how Windham Group communicates with injured employees, how to access the online network, and is it in the intro letter that is sent to them. Ms. Lovett responded that Windham Group's entire network is updated on a regular basis as changes are made to it. On Windham Group's website, they educate all of the employers and also provide their direct phone number in which Ms. Lovett can be called with any questions at any time.

Ms. Bernard motioned to approve, Ms. Crouch seconded. *The motion was passed unanimously.*

#### **Injury Management Facilitators -**

Andrea Paul, RN, Windham Group  
Loree Turgeon, RN, CCM (Liberty Mutual)

After a brief discussion, Ms. Crouch made a motion to approve Ms. Paul and Ms. Turgeon as Management Facilitators, Ms. Mitchell seconded the motion. *The motion was passed unanimously.*

## Department Updates

Insurance— Ms. MacFadden reported that the New Hampshire Insurance Department is expecting the NCCI to make its rate filing within the next month or so. She does not have any early indication as to whether it is going to be another decrease but is hoping so. She will have more to report on this at the next meeting.

Labor— Mr. Jenkins introduced Rudy Ogden, an attorney for the Department of Labor, who will come to the Workers' Compensation Advisory Council meetings upon Mr. Jenkins' retirement in mid-September.

Mr. Jenkins reported that the Department has not had any requests for hearings on medical invoice disputes. He also reports that the LAB 300, 400 and 500 rules are finally up online and available dealing with workers' compensation claims, self-insurance, etc. They are available at two locations, one site is [gencourt.state.nh.us/rules](http://gencourt.state.nh.us/rules) and on the Department of Labor's website at [nh.gov/labor](http://nh.gov/labor) under Laws and Rules. These became effective on April 1, 2016. One factor in the rules is that there are many DOL forms that may need to be filled out. The Department's website instructs the user to use the forms that are available on its website and where to find it, but the "gencourt" site does not reproduce the forms. So if one wants the forms they will need to go to the Department of Labor's website.

Legislature— Senator Daniels talked about HB 1697, regarding the different definitions between the Department of Labor, Employment Compensation and the IRS when it comes to an independent contractor. He would like to continue to work on this and bring those definitions closer together. He would recommend that the Council look at this going forward.

Mr. Jenkins gave updates on the other House Bills. The bills that were sent to Interim Study are still there. They did not revive. The bills that have changed their status from the last Minutes are:

HB 1697 is the UBER regulation. It was subject to a lot of detail editing but it finally did pass, and as Senator Daniels noted, the bill does not specifically address the question about UBER drivers, whether they are independent contractors or employees. The bill reads, "A transportation network company shall not be deemed to control, direct, or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract." It leans heavily towards calling them independent contractors but leaves the exception that if there is a written contract that makes them an employee, then one can be an employee.

SB 838, which deals with the size and the pay of the Workers' Compensation Appeals Board, was signed and was effective immediately. This is the part of the bill that changes the number of the CAB members from 21 up to 33, depending on workload, divided into three for management, employee and attorney neutral, and raises the per diem pay.

SB 203 is the four-year time limit after the last payment of benefits, and formerly, the claimant could not claim or ask for disability benefits for a medical procedure that was delayed but was inevitable. This bill has now passed and will become part of RSA 281-A:48, and essentially, it says that there has to be a written acknowledgement by the employee and notification to the workers' compensation carrier within the medical record including the medical reason for postponing the medical procedure. If the medical procedure is anticipated during the time soon after the claims are being paid that future medical treatment will be required, the doctor should write it down in the notes, acknowledged by the employee, and inform the carrier and then one can bring it up more than four years later seeking disability benefits. Essentially, this bill talks about the necessary things that have to be in place for the injured worker to make a claim for disability later to avoid the 48-month statute of limitations. The injured worker is not barred from

requesting a hearing after the 48-month statute of limitations. This will apply to claims resulting from injuries on and after the effective date of January 1, 2016.

SB 409 is the first responder's critical injury benefit, a special benefit paid by the State for injured police officers and firefighters. The deadline for making a claim was extended into 2018. Also, there will be a committee to study soft-tissue injuries for all of workers' compensation. This may be expanded beyond first responders to every work injury dealing with the question of damage to internal organs which is not a permanent impairment under New Hampshire law and the committee will be studying that.

SB 449 started off as a Senate bill to require disability payments to injured workers to be made by direct deposit. When it got to the House, they took that out and said instead that the payments for disability have to be made on the same date each week and the Senate did not agree so this bill died.

### **Old Business –**

**Managed Care Lab Rules – Chapter Lab 700** – Ms. Paula Minnehan from the audience posed the question as to what changes are being made to the rules. Mr. Jenkins indicated that one will have to look at them once they are published. More will be discussed at the Public Hearing.

**Public Hearing Date** - After a brief discussion, a Public Hearing date was decided upon, Wednesday, July 27, 2016 at 10:00 a.m. at the Department of Labor.

**New Business** – Nothing to report.

The Council scheduled the next Workers' Compensation Advisory Council meeting for Friday, August 5, 2016 at 9:00 am.

### **Meeting Adjourned-**

Ms. Crouch made a motion to adjourn at 9:40 a.m.